

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 08-34031-H4-11
TEXAS STANDARD OIL COMPANY §
DEBTOR § CHAPTER 11

**MS CRESCENT NINE GREENWAY SPV, LLC'S MOTION FOR
ENTRY OF AGREED ORDER LIFTING AUTOMATIC STAY
TO ALLOW SETOFF OF SECURITY DEPOSIT**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 15 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MOTION ON APRIL 14, 2009 AT 9:00 A.M. IN COURTROOM NO. 600, 515 RUSK AVENUE, 6TH FLOOR, HOUSTON, TEXAS 77002

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

MS Crescent Nine Greenway SPV, LLC ("Crescent") files this Motion for Entry of Agreed Order Lifting Automatic Stay to Allow Setoff of Security Deposit (the "Motion"), and would respectfully show the Court as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core matter pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G). Venue of this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background

2. On June 26, 2008 (the “**Petition Date**”), Texas Standard Oil Company (the “**Debtor**”) filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

3. On or about February 11, 2002, the Debtor as tenant, and Crescent Real Estate Funding III, L.P., predecessor-in-interest to Crescent (“**CREF**”), as landlord, entered into a lease (the “**Lease**”)¹ of non-residential real property located on the thirtieth (30th) floor of Nine Greenway Plaza, Houston, Texas 77046 (the “**Property**”). In conjunction with the execution of the Lease (and pursuant to Section 1(i) if the Lease), Debtors paid to CREF the sum of \$4,478.73 as a security deposit (the “**Security Deposit**”), which Crescent currently retains.

4. On October 16, 2008, the Court entered an Order Granting Debtor’s Motion to Extend Time to Assume or Reject Lease (Docket No. 51) (the “**Lease Assumption or Rejection Extension Order**”). Pursuant to the Lease Assumption or Rejection Extension Order, the time within which the Debtor may file a motion to assume or reject the Lease was extended through January 22, 2009. The Debtor vacated the Property on January 17, 2008, and the Lease was rejected effective January 22, 2009. Pursuant to § 502(b)(6) of the Bankruptcy Code, Crescent is

¹ The Debtor and CREF entered into that certain First Amendment to Office Lease dated February 20, 2004; and the Debtor and Crescent Real Estate Funding V, L.P. (predecessor-in-interest to Crescent) entered into that certain Second Amendment to Office Lease dated July 27, 2007; and the Debtor and Crescent entered into that certain Third Amendment to Office Lease dated May 20, 2008. For purposes of this motion, all references to the Lease shall be construed when appropriate to include the First Amendment to Office Lease, the Second Amendment to Office Lease, and the Third Amendment to Office Lease.

entitled to lease rejection damages of one years rent in an amount not less than \$83,024.94 (the “*Claim*”).

5. Accordingly, Crescent’s aggregate claim against the Debtor consists of (a) a secured claim for \$4,478.73, the amount of the Security Deposit, and (b) a general unsecured claim for an amount not less than \$78,331.01.

Authority and Relief Requested

6. Section 553(a) of the Bankruptcy Code provides in part:

Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case

Thus, § 553(a) requires that debts must be (i) mutual, and (ii) arise pre-petition.

7. Both of these requirements are satisfied in this case because the Claim and the Security Deposit both arise out of a Lease that was entered into between Crescent and the Debtor well in advance of the Petition Date.

8. Further, § 506(a)(1) of the Bankruptcy Code provides that “[a]n allowed claim of a creditor . . . that is subject to setoff under section 553 of this title, is a secured claim . . . to the extent of the amount subject to setoff.” Accordingly, Crescent holds a secured claim in the full amount of the Security Deposit, \$4,478.73.

9. Based on the foregoing authority, Crescent requests that the automatic stay be lifted to allow Crescent to exercise its setoff rights with respect to the Security Deposit.

WHEREFORE, PREMISES CONSIDERED, Crescent respectfully requests that the Court (i) sign and enter the Agreed Order submitted in connection herewith, and (ii) grant Crescent such other and further relief which is just and proper.

Respectfully submitted,

JACKSON WALKER L.L.P.

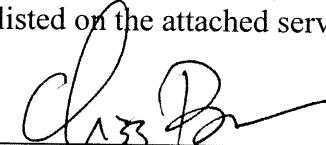
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**ATTORNEYS FOR MS CRESCENT
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CERTIFICATE OF SERVICE

This is to certify that on this 26 th day of March, 2009, a true and correct copy of the foregoing instrument was served electronically by the Clerk of Court, via email and/or via United States mail, postage prepaid upon the parties listed on the attached service list.


Chevazz G. Brown

SERVICE LIST
Case No. 08-34031-H4-1

DEBTOR

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SERVICE LIST
Case No. 08-34031-H4-1

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Case No. 08-34031-H4-1**

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SERVICE LIST
Case No. 08-34031-H4-1

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SERVICE LIST
Case No. 08-34031-H4-1

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